

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of:	)	
	)	MB DOCKET NO. 07-57
Implementation of the Third-Party	)	
Access Commitment in the Sirius-XM	)	DA 09-529
Merger	)	
	)	

To: The Commission, Office of the Secretary  
Attn: Chief, Media Bureau

**COMMENTS OF RADIO ONE, INC.**

Radio One, Inc. (“Radio One”) submits these comments in response to the Commission’s solicitation for guidance on the implementation of the condition for merger between Sirius Satellite Radio Inc. (“Sirius”) and XM Satellite Radio Holdings Inc. (“XM”) (collectively, “Sirius XM”) that four percent of audio channels be leased to a Qualified Entity or Entities.<sup>1</sup> A “Qualified Entity” is defined in the Merger Order as any entity that is majority-owned by persons who are African-American, not of Hispanic origin; Asian or Pacific Islanders; American Indians or Alaskan Natives; or Hispanics.<sup>2</sup> Radio One is an African-American majority-controlled broadcast media company that owns and operates fifty-two terrestrial radio stations in sixteen U.S. markets, which are primarily targeted to an urban listening audience. In submitting these comments, Radio One emphasizes its support for the Commission’s goals of fostering competition and diversity for

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<sup>1</sup> *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, 23 FCC Rcd 12348, 12408, ¶ 131 (2008) (“*Merger Order*”).

<sup>2</sup> *Id.* at 12409, ¶ 134 n.437.

the Satellite Digital Audio Radio Service (“SDARS”) platform by ensuring market access for minority-owned broadcasting companies.<sup>3</sup>

## **I. INTRODUCTION AND SUMMARY**

In the Merger Order, as a condition of the Commission’s approval of the transfer of control of the licenses held by XM to Sirius, both parties voluntarily agreed to lease to one or more Qualified Entities a minimum of four percent of the full-time audio channels on the Sirius platform and on the XM platform, respectively (which currently represents six channels on the Sirius platform and six channels on the XM platform) (“Third-Party Access Commitment”). The Commission did not set out implementation procedures for this commitment at the time of the Merger Order. Radio One hereby respectfully submits its recommendations regarding several implementation issues arising under the Third-Party Access Commitment.

## **II. GENERAL CONSIDERATIONS FOR IMPLEMENTING THIRD-PARTY ACCESS COMMITMENT AND ESTABLISHING ELIGIBILITY FOR A QUALIFIED ENTITY**

As a threshold matter, when developing implementation procedures under the Third-Party Access Commitment, the parties should strive to achieve a straightforward application and selection process to encourage broad programming diversity across the proposed 12 channels and to minimize the chances of an appeal in response to any procedural requirements or selected applicants. Accordingly, the process should include a relatively simple application with a reasonable, firm deadline.

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<sup>3</sup> *Promoting Diversification of Ownership in the Broadcasting Services, Report and Order and Third Further Notice of Proposed Rulemaking*, 23 FCC Rcd 5922 (2008). In a separate statement to the Report and Order, Acting Chairman Copps explained, “Broadcasters, citizens, Members of Congress, and every leading civil rights organization agree that the status quo is not acceptable,” and further noted that “paltry levels of minority and female ownership are a reality.” *Id.* at 5983.

A Qualified Entity should possess sufficient financial capability to provide the proposed services, as well as the resources to offer programming consistent with broadcast industry standards and any applicable laws. The term Qualified Entity should be further refined to include any entity with a 51% or greater minority-based voting control. Additionally, as a condition of eligibility, applicants should be willing and able to indemnify Sirius XM from any liability arising from lapses in compliance, including without limitation, claims relating to the applicants' programming content.

### **III. RECOMMENDED STRUCTURE FOR AUDIO CHANNELS CREATED UNDER THE THIRD-PARTY ACCESS COMMITMENT**

Under the Merger Order, Sirius XM agreed to lease a total of 12 channels, which shall include six channels on each SDARS platform. Radio One recommends splitting the 12 available channels into two groups. The first group would consist of three channels on Sirius that would be simulcast on three corresponding XM channels, and vice versa (each, a "Super Channel"), while the second group would consist of the remaining six channels, which would be split evenly between XM and Sirius. The eligibility criteria for programmers awarded a Super Channel would be more stringent than those for the remaining six channels, which would be made available to smaller broadcasters, who could provide programming that is important to minority communities, despite lacking the widespread audience and advertising support needed to provide round-the-clock programming. Radio One further believes that the non-simulcast channels would offer a national platform to niche programming, which has a more narrow appeal and thus is not financially viable for full-time over the air broadcasting.

#### **A. Criteria for Awarding Super Channels**

Each of the Super Channels should be operated by an entity with the resources and experience to provide programming twenty-four hours a day, seven days a week (“24/7”) to the largest U.S. minority audiences.<sup>4</sup> Therefore, an applicant for the three proposed Super Channels should be required to certify that it has a proven track record as a broadcaster with stations owned or operated in at least 10 geographically dispersed markets as well as sufficient financial resources to provide 24/7 programming. In addition, eligibility criteria for the operation of a Super Channel should include a demonstrated commitment to serve the African-American, Hispanic or Asian audience, as applicable, and a minimum five year lease term for the respective channel. As noted, any Qualified Entity applicant must meet the 51% or greater minority-based voting control requirement. Lastly, in the interest of reaching a more diverse group of programmers, no entities currently operating channels on XM or Sirius should be eligible to operate a Super Channel.

**B. Method of Awarding Super Channels**

In furtherance of the Commission’s promotion of diversity of ownership among broadcasters, Radio One recommends that the three Super Channels be awarded to operators with programming targeting each of the three largest minority groups – African-American, Hispanic and Asian. Specifically, the Super Channel licenses should be awarded based on the eligible broadcasters’ total national cumulative rating across all of such applicants’ owned broadcast stations for the minority group that they are applying to serve. For example, the Super Channel license for the Hispanic community would be

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<sup>4</sup> According to the U.S. Census Bureau’s Census 2000, the three largest minority populations in the United States are African-American, Hispanic and Asian. Profile of the General Demographic Characteristics: 2000. Census Summary File 1 (SF 1) 100-Percent Data. United States.” American FactFinder. 2000. Bureau of the Census.

awarded upon considering the broadcaster's national Arbitron Hispanic cumulative rating. In evaluating cumulative ranking, the Commission and/or any other party involved in the selection process would be employing objective criteria and thus, would minimize the need to directly compare competing applicants, given the unlikelihood that two or more entities share the same cumulative rating in each of the above-noted demographic categories.

**C. Criteria for Awarding Non-Simulcast Channels**

The six remaining non-simulcast channels should be allocated to smaller programmers also seeking to provide programming service to a specific minority group. Such applicants should similarly meet any requirements for Qualified Entities (such as Radio One's proposed requirement of 51% or greater minority-based voting control), and should not currently operate any other Sirius or XM channels. Unlike Super Channel licensees, applicants for the non-simulcast channels may not necessarily be required to provide 24/7 programming. Instead, applicants will be expected to fill at least a daily four hour block,<sup>5</sup> and would have a shorter lease term commitment of two years.<sup>6</sup>

**D. Method of Awarding Non-Simulcast Channels**

As an example of minimum programming hour requirements for the non-simulcast channels, if there are six qualified applicants, then each could receive a channel and be permitted to broadcast 24 hours per day with an 18-hour programming minimum. However, if there are 36 qualified applicants, then the programming hours could be split into four-hour blocks (seven days per week) per applicant. In the event there are between

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<sup>5</sup> Radio One suggests a four-hour block of time, which is the typical day part for terrestrial radio broadcast operations.

<sup>6</sup> Radio One proposes that the process for selecting these remaining six channels be repeated every two years to allow for new small broadcaster entrants.

six and 36 qualified applicants, then the available time could be broken into four-hour blocks and divided evenly with some applicants randomly awarded additional time by lottery, if applicable.<sup>7</sup> If there are more than 36 qualified applicants, then the time on the six non-simulcast channels could be split into 36 daily four-hour blocks and awarded by lottery.<sup>8</sup>

After initially soliciting and accepting applicant bids and setting the selection parameters, a lottery system reduces the need to exercise discretion over which entity will be awarded time on a channel. As an additional consideration, the Commission may require that Sirius XM use its best efforts to group like-programming (either by minority community served or by programming format – i.e., talk, musical genre, etc.) on the same channel. As noted, this channel award process should be repeated every two years to allow for new entrants and the possibility of new programming schedules for returning applicants.

#### **IV. CONCLUSION**

Radio One respectfully submits the above recommendations for the Commission's consideration with respect to implementing the Third-Party Access Commitment. Facilitating these general objectives will enable access to the SDARS by the unique interests represented by minority-owned broadcasters. Radio One believes that its approach to subdivide the 12 available channels into three Super Channels and six

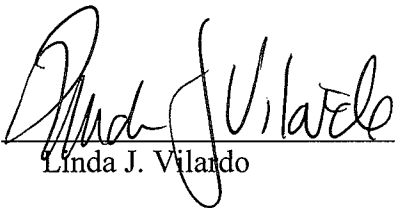
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<sup>7</sup> For example, if there were only 30 qualified applicants, each would be guaranteed a four-hour block, leaving 48 additional hours available for programming. The Commission and/or any other administering authority could allocate by lottery an opportunity for the interested qualified applicants to receive an extra four-hour block.

<sup>8</sup> The Commission may also deem it appropriate to further refine this process by allocating pre-determined or guaranteed slots and/or employing a separate lottery based on the minority groups or subgroups (as applicable) served by such applicants.

non-simulcast channels will provide for diverse programming content while increasing the opportunity for offering high quality broadcasting to the satellite listening audiences.

Respectfully submitted,

By:   
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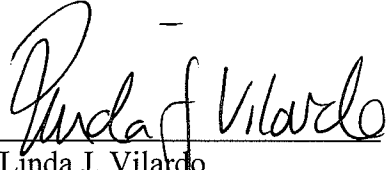
## **CERTIFICATE OF SERVICE**

I, Linda J. Vilardo, certify that on this 30<sup>th</sup> day of March 2009, I caused a true and correct copy of the foregoing Comments of Radio One, Inc. in the Matter of the Implementation of the Third-Party Access Commitment in the Sirius-XM Merger to be served by first-class mail, postage prepaid, upon:

Honorable Michael J. Copps, Acting Chairman  
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Honorable Jonathan S. Adelstein  
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